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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRIS SMITH, CHERYL SMITH, KAREN
 SMITHSON, ALBERTO CORNEA,
 MICHELLE ROGERS, DEBORAH CLASS,
 AMBER JONES, ALEXIS KEISER, LOORN
 SAELEE, THOMAS PEAR, and
 TANNAISHA SMALLWOOD, individually
 and on behalf of all other similarly situated
 individuals,

Plaintiffs,

v.

APPLE INC.,

Defendant.

No. 4:21-cv-09527-HSG

Plaintiffs' Motion for Preliminary
 Approval of Class Action Settlement

CLASS ACTION

Dept.: Courtroom 2
 Judge: Hon. Haywood S. Gilliam, Jr.

Date: October 3, 2024
 Time: 2:00 p.m.

Third Amended Complaint Filed:
 October 31, 2023

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on September 12, 2024 at 2:00 p.m., before the Honorable Haywood S. Gilliam, Jr. of the United States District Court for the Northern District of California, Plaintiffs will and do hereby move the Court, pursuant to Federal Rules of Civil Procedure 23(a), (b)(3), and (e), for entry of the proposed Preliminary Approval Order, and request that the Court set the following schedule:

Event	[Proposed] Deadline
Class Action Fairness Act notice to state and federal officials, under 28 U.S.C. § 1715	Within 10 days after filing of the motion for preliminary approval
Class data to be submitted to Settlement Administrator	As soon as practicable, but no later than 30 days after entry of preliminary approval
Notice Date	No later than 60 days after entry of preliminary approval order
Notice to be substantially completed	No later than 85 days after entry of preliminary approval order
Plaintiffs to move for attorneys' fees, expenses, and service awards	100 days after entry of preliminary approval order
Plaintiffs to move for final approval of the settlement	120 days after entry of preliminary approval order
Deadline for the submission of objections and requests for exclusion, and opposition or objections to Plaintiffs' motion for attorneys' fees, expenses, and service awards	120 days after entry of preliminary approval order
Reply briefs in support of final approval and motion for attorneys' fees, expenses, and service awards, and responses to any timely objections	145 days after entry of preliminary approval order
Deadline to update or confirm payment information and elect payment method	145 days after entry of preliminary approval order
Final Fairness Hearing	At least 165 days after entry of preliminary approval order

This Motion is based on this Notice of Motion, the incorporated memorandum of points and authorities, the accompanying Declaration of Lucy Tufts (Exhibit 2, "Tufts Decl."), the record in this action, the argument of counsel, and any other matters the Court may consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After several years of litigation and eight months of settlement negotiations, Plaintiffs seek preliminary approval of a \$20,000,000 non-reversionary cash settlement to resolve this class action and compensate consumers who reported symptoms of battery swell after purchasing a First Generation, Series 1, Series 2, or Series 3 Apple Watch. The Settlement Agreement is attached as Exhibit 1.

The settlement meets all criteria for preliminary approval under Rule 23 of the Federal Rules of Civil Procedure and the Northern District’s Procedural Guidance for Class Action Settlements (“Guidelines”).¹ The settlement was reached after more than eight months of arm’s length negotiations and with the help of veteran mediator Randall Wulff. The settlement follows two motions to dismiss, review of over 1.4 million pages of documents, weeks of device inspection and testing supervised by neutral expert Dr. David Mitlin of the Walker Department of Mechanical Engineering (University of Texas at Austin), eight sets of written discovery to Apple, three sets of written discovery to each of 12 named plaintiffs, and intensive work with the parties’ experts. The parties have a thorough understanding of the strengths and weaknesses of their positions.

All persons in the United States who own or owned a First Generation, Series 1, Series 2, or Series 3 Apple Watch ("Class Watches" or "Watches") in the United States for personal use and are reflected in Apple’s records as having reported the Covered Issues in the United States are eligible to receive a share of the proposed settlement (the “Settlement Class”). (Ex. 1, ¶ 24). “Covered Issue(s)” means “issues reported to Apple regarding the Covered Watches reflected in Apple’s records as having reported symptoms potentially associated with battery swell.” *Id.*, ¶ 5.

After investigating the facts and considering applicable law, Plaintiffs and their counsel

¹ <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>

concluded that it is in the best interests of the Settlement Class Members to enter into the Settlement to avoid the uncertainties of litigation and to assure meaningful and timely benefits to the Settlement Class Members. For the reasons stated here, the Named Plaintiffs and their counsel respectfully submit that the terms and conditions of this Settlement are fair, reasonable, adequate, and in the best interests of all members of the Settlement Class.

Accordingly, the Named Plaintiffs respectfully request that the Court enter an Order: (1) preliminarily approving the Settlement; (2) certifying, for settlement purposes, the proposed Settlement Class under Rule 23(a), (b)(3), and (e); (3) approving and ordering dissemination of the proposed class notice and forms of the Notice Program set forth in the Settlement Agreement; (4) appointing Plaintiffs Chris Smith, Alexis Keiser, Amber Jones, and Alberto Cornea as Settlement Class Representatives; (5) appointing Steven Nicholas and Lucy Tufts of Cunningham Bounds, Michael Ram and Marie Appel of Morgan & Morgan, and Ben Kilborn of Kilborn Law, LLC, as counsel for the Settlement Class (“Class Counsel”); (6) appointing Angeion Group as the Settlement Administrator; and (7) scheduling a Final Approval Hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

The parties vigorously litigated this case for two years before agreeing to a settlement in principle.

A. Plaintiffs’ Allegations and Early Case Activities

In December 2021, Plaintiffs filed this class action against Apple asserting claims arising out of an alleged defect in the Apple Watch. (ECF No. 1). Plaintiffs alleged violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”); violations of the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”); fraudulent omissions; violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code § 1791 *et seq.*; breaches of implied warranties; and violations of the Magnuson Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* On March 28, 2022, Plaintiffs filed their First Amended Complaint, which named additional Plaintiffs and alleged additional state law claims. (ECF No.

1 31).

2 **B. Motions to Dismiss**

3 On April 27, 2022, Apple moved to dismiss the First Amended Class Action Complaint.
4 (ECF 41). On February 17, 2023, the Court granted in part and denied in part the motion to
5 dismiss with leave to amend. (ECF 80). The Court declined to dismiss Plaintiffs' fraudulent
6 omission claims, holding that Plaintiffs had adequately alleged pre-sale knowledge of the alleged
7 defect. *Id.* Plaintiffs adequately pled their claims under the consumer protection statutes of
8 Michigan, New York, and Texas. *Id.* The Court dismissed Plaintiffs' claims for equitable relief,
9 most of their Song-Beverly Act claims, and their claims under the Magnuson-Moss Warranty
10 Act with leave to amend. *Id.* The Court dismissed Plaintiffs' breach of implied warranty claims
11 without leave to amend. *Id.*

12 On March 17, 2023, Plaintiffs filed their Second Amended Consolidated Class Action
13 Complaint ("SAC") Act. (ECF No. 84). On May 1, 2023, Apple moved to dismiss, arguing that
14 Plaintiffs improperly added new plaintiffs and claims and that the claims for equitable relief
15 should be dismissed. (ECF 100).

16 On October 30, 2023, the Court granted Plaintiffs' request to file a Third Amended
17 Complaint and mooted Apple's Motion To Dismiss the Second Amended Complaint. (ECF. No.
18 134).

19 **C. Discovery**

20 Settlement negotiations were informed by extensive discovery. Apple was initially
21 served with Plaintiffs' discovery in March 2022. On May 17, 2022, this Court denied Apple's
22 request to stay discovery. (ECF 44). Plaintiffs propounded eight sets of document requests and
23 one set of interrogatories to Apple and served seven subpoenas duces tecum on non-party
24 resellers and repair providers. Tufts Decl., ¶ 5.

25 The parties conducted extensive discovery negotiations, including a number of meet and
26 confer sessions, regarding topics including but not limited to Stipulated Protective Order and ESI

Protocol; the scope of individual discovery requests; the time period applicable to discovery requests; production of specific documents in native form; appropriate search terms and custodians for ESI searches; methods for producing representative samples in lieu of total document populations for customer complaint records; timing and volume of rolling productions; and prioritization of discovery requests. Tufts Decl. ¶ 6. Remaining disputed issues were addressed in a joint letter filed with the Court on April 11, 2023. *Id.*

Apple produced about 1.4 million pages of documents. Tufts Decl. ¶ 7. Plaintiffs' counsel reviewed, analyzed, summarized, and built a chronology of all these documents, which informed expert analysis and settlement discussions. *Id.* Each Plaintiff responded to at least 16 interrogatories, 35 document requests, a request for inspection of their Apple Watch, and produced documents. *Id.* The parties also engaged in discovery motion practice before Judge Beeler. (ECF Nos. 65, 68, 71, 85, 92, and 98).

D. Settlement Negotiations

On November 1, 2023, the parties had a full day mediation with Randy Wulff in Napa. The parties discussed the facts and law as well as the strengths and weaknesses of their respective positions. At the conclusion, the Parties reached a tentative agreement. Follow up discussions ensued for several weeks and on February 6, 2024, the parties signed a term sheet. On July 18, 2024, a formal settlement agreement was finalized. Tufts Decl. ¶ 8. It was executed on August __, 2024. *Id.*

III. THE PROPOSED SETTLEMENT

A. The Proposed Settlement Class

The Settlement contemplates relief for the following proposed Settlement Class:

“All natural persons who reside in the United States, who own or owned any model First Generation, Series 1, Series 2 or Series 3 Apple Watch for personal and/or household use, and who are reflected in Apple’s records as having reported the Covered Issues in the United States.” (Ex. 1, ¶ 24). “Covered Issue(s)” means “issues reported to Apple regarding the Covered

1 Watches reflected in Apple's records as having reported symptoms potentially associated with
2 battery swell." (Ex. 1, ¶ 5).

3 Apple has identified approximately 625,000 Settlement Class members.²

4 **B. Settlement Relief**

5 The Settlement benefits squarely address the issues raised in the litigation and provide
6 significant relief to the Settlement Class Members. The cash payment will be either \$20 for
7 each Covered Device or, if necessary, a pro rata portion of the Net Settlement Fund. If,
8 following the deadline for Settlement Class Members to update or confirm payment
9 information and elect a payment method, it appears that the Net Settlement Fund minus the sum
10 of all Class Payments will exceed \$50,000, then each Settlement Class Member who has
11 confirmed or updated payment information and made a payment selection by the Response
12 Deadline, as well as any Settlement Class Members for whom valid, current payment
13 information can be confirmed by the Settlement Administrator, will receive an equal, total
14 payment of up to a maximum of \$50 for each Covered Device. (Exh. 1, Section B(4)). The
15 payment is appropriate in light of costs for service related to symptoms associated with the
16 alleged battery swell issue.

17 **C. Notice to the Class**

18 The Settlement provides a comprehensive Notice Program developed with the assistance
19 of Angeion Group, which specializes in settlement administration and class notice plans. (Exs.
20 A, B, and C to Ex.1, the Settlement Agreement). Notice will be emailed to Settlement Class
21 members for whom Apple has an email address, and mailed to Settlement Class members for
22 whom Apple has only a physical address.

23 The Settlement Administrator will establish and maintain a settlement website. (Ex. 3, ¶¶
24 30-32, Decl. of Steven Weisbrot, "Weisbrot Decl."). The Settlement website will include,

25 ² Excluded from the Settlement Class are any entity in which Apple has a controlling interest; Apple's directors,
26 officers, and employees; and Apple's legal representatives, successors, and assigns. Also excluded from the
27 Settlement Class are all judicial officers assigned to this case as well as their staff and immediate families.

1 without limitation, the Full Class Notice in downloadable PDF format, the Settlement
2 Agreement, the Third Amended Complaint, the Preliminary Approval Order, the preliminary
3 approval filings, the motion for attorneys' fees and expenses, the motion for final approval of
4 class action settlement, frequently asked questions, information on how to object or request
5 exclusion, and contact information for Class Counsel and Angeion. *Id.*, ¶ 31. The website will
6 include a readily accessible means for Settlement Class members to electronically update or
7 confirm their payment information and select their preferred payment method. The website will
8 explain how Class Payment will be distributed. The website shall remain accessible until 30 days
9 after the Settlement Administrator has completed its obligations under this Settlement
10 Agreement. The Settlement Administrator shall mail or email the Full Class Notice to any
11 Settlement Class member who requests it.

12 The Notices provide Settlement Class Members with all required information to make an
13 informed decision whether to participate in the Settlement. The Notices will include, among other
14 things: information regarding the nature of the lawsuit; a description of the material terms of the
15 Settlement; the class definition; the deadline by which Settlement Class Members must opt out
16 or submit objections; the date upon which the Final Approval Hearing will occur; the address of
17 the Settlement Website; the telephone number of the Settlement Administrator; and related
18 information. The Notices will also advise how Settlement Class Members can update or
19 confirm their payment information, elect their preferred payment method (Ex. 7), and what will
20 happen if they do not do so. (Exs. A, B, and C to Ex.1, the Settlement Agreement). Further, the
21 Settlement Administrator will maintain a toll-free number where Settlement Class Members
22 can obtain additional information and request documents by mail.

23 **D. Opt-Out and Objection Procedures**

24 Settlement Class Members may exclude themselves from the Settlement by completing
25 and mailing the proposed opt-out form to the Settlement Administrator, postmarked no later than
26 60 days after the Notice Deadline. (Ex.1, Section E).

1 Settlement Class Members may also object to the Settlement and to Class Counsel's
2 request for attorneys' fees, costs, and expenses, and Service Awards. (Ex. 1, Section D). To
3 object, a Settlement Class Member must submit the written objection electronically or by mail to
4 the Court as identified in the notice, postmarked no later than 60 days after the Notice Deadline.
5 The objection must set forth, among other things: (a) the full name, address, telephone number,
6 and email address of the objector and any counsel representing the objector; (b) the case name
7 and number: *Smith et al. v. Apple*, Case No. 4:21-cv-09527 (N.D. Cal.); (c) information sufficient
8 to verify that the objector is a Settlement Class Member; (d) a statement whether the Objection
9 applies only to the objector, to a specific subset of the class, or to the entire class; (e) the grounds
10 for the Objection; and (f) be personally signed and dated by the objector.

11 **E. Notice and Administrative Costs**

12 Costs of notice and administration will be paid from the settlement fund. (Ex. 1, Section
13 F(1).

14 **F. Attorneys' Fees, Costs, and Service Awards**

15 Counsel will apply for no more than \$5,000,000 in attorneys' fees, plus costs and
16 expenses. Class Counsel will also apply for a Service Award for lead Plaintiff, Chris Smith, in
17 the amount of \$5,000 and Awards for each of the remaining named Plaintiffs in the amount of
18 \$2,000 in recognition of the commitment and effort they have respectively contributed for the
19 benefit of the Settlement Class. By no later than 20 days before the deadline to object, Class
20 Counsel will submit to the Court a detailed memorandum seeking attorneys' fees, costs, and
21 expenses. The Parties have reached no clear-sailing or other agreement on the amount of
22 attorneys' fees and expenses that Class Counsel will seek. While recognizing that the Settlement
23 entitles Class Counsel to apply for reasonable fees and expenses, Apple reserves the right to
24 object to or oppose Class Counsel's requests for attorneys' fees and expenses.
25
26

G. Release

In exchange for the benefits provided under the Settlement, the Settlement Class Members will release Defendants and related entities from all claims arising out of or related to the claims alleged in the Action. (Ex. 1, Section H).

IV. ARGUMENT

A. The Court Should Certify the Settlement Class

1. The Settlement Class Meets the Requirements of Rule 23(a)

In granting preliminary approval, the Court should confirm that the proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997). The prerequisites for certification under Rule 23(a) are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation, each of which is satisfied here. Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011).

i. The Settlement Class Members Are Too Numerous To Be Joined

The proposed Settlement Class encompasses over 600,000 Settlement Class Members. *See Nguyen v. Radiant Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) (finding 40 members presumptively satisfies numerosity).

ii. There Are Common Questions of Law and Fact

The proposed Settlement Class satisfies the commonality requirement of Rule 23(a), which requires that class members' situations "share a common issue of law or fact, and [be] sufficiently parallel to insure a vigorous and full presentation of all claims for relief." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010). The common issues that their claims share include, but are not limited to: (i) whether the Apple Watch was defective; (ii) whether the alleged defect caused the Apple Watch to fail or otherwise suffer damage; and (iii)

whether Apple had knowledge of the alleged defect and, if so, failed to disclose the alleged defect.

These questions are capable of class-wide resolution and would “resolve an issue that is central to the validity of each one of the claims in one stroke.” *In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 536661, at *5 (N.D. Cal. Feb. 11, 2019) (citation omitted). Therefore, commonality is satisfied.

iii. Plaintiffs’ Claims Are Typical of the Class

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class,” and “assure[s] that the interest of the named representative[s] align[] with the interests of the class,” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). This requirement, like commonality, is “permissive and requires only that the representative’s claims are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010), *abrogated on other grounds by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (citation and internal quotation marks omitted); *see also Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011) (noting that typicality is “satisfied when each class member’s claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant’s liability”), *abrogated on other grounds by Comcast Corp. v. Behrend*, 569 U.S. 27, 133 S.Ct. 1426, 185 L.Ed.2d 515 (2013).

Here, Plaintiffs’ claims arise from the same course of conduct. Because all Settlement Class Members purchased a First Generation, Series 1, Series 2, or Series 3 Apple Watch and allegedly experienced a Covered Issue, all “the named plaintiffs have the same or similar [alleged] injury as the unnamed [Settlement Class Members].” *Keilholtz v. Lennox Hearth Prod. Inc.*, 268 F.R.D. 330, 337 (N.D. Cal. 2010). Accordingly, Plaintiffs’ experiences are typical of the Settlement Class Members’ experiences, and their alleged injuries are similar. *See id.* at

338. Further, Plaintiffs are adequate class representatives with no conflict of interest and are represented by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020; Tufts Dec. ¶ 9.

**iv. Plaintiffs and Class Counsel Will Fairly and Adequately
Protect the Interests of the Class**

As Rule 23(a)(4) requires, Plaintiffs and their counsel will “fairly and adequately protect the interests of the class.” Courts ask two questions here: “(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). “To establish adequacy, class representatives generally need only to be familiar with the basis for the suit and their responsibilities as lead plaintiffs such that they can uphold their obligations to other class members.” *In re Intuitive Surgical Sec. Litig.*, No. 5:13-cv-01920-EJD, 2016 WL 7425926, at *7 (N.D. Cal. Dec. 22, 2016) (quotations and citation omitted).

Plaintiffs agreed to serve in a representative capacity, communicated with their attorneys, fulfilled their discovery obligations, and acted in the best interests of the Settlement Class. Tufts Decl., ¶ 9. *See Mergens v. Sloan Valve Co.*, 2017 WL 9486153, at *6 (C.D. Cal. Sept. 18, 2017) (adequacy requirement met where plaintiff had no interests antagonistic to the class).

Class Counsel have demonstrated their adequacy. The attorneys working on this case are experienced in prosecuting consumer class actions and other complex cases. Tufts Decl., ¶¶ 1-4; Ram Decl., ¶¶ 1-13 (Exhibit 3); Kilborn Decl., ¶¶ 1-4 (Exhibit 4). They have dedicated ample time and resources to investigating, pleading, and pursuing these claims and will continue to devote the resources necessary to prosecute the litigation to judgment. Tufts Decl. ¶ 10.

2. The Settlement Class Meets the Requirements of Rule 23(b)(3)

“In addition to meeting the conditions imposed by Rule 23(a), the Parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).” *Hanlon*, 150 F.3d at 1022. Here, the proposed class is maintainable under Rule 23(b)(3),

as common questions predominate over any questions affecting only individual members and class resolution is superior to other available methods for a fair resolution of the controversy.

i. Common Issues of Law and Fact Predominate for Settlement Purposes

The predominance inquiry tests the cohesion of the class, “ask[ing] whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 136 S. Ct. 1036, 1045, 194 L. Ed. 2d 124 (2016) (citation omitted). Predominance is ordinarily satisfied, for settlement purposes, when the claims arise out of the defendant’s common conduct. *Gold v. Lumber Liquidators, Inc.*, 323 F.R.D. 280, 288 (N.D. Cal. 2017) (predominance satisfied where claims were based on “the same deceptive conduct”); *Kacsuta v. Lenovo (United States) Inc.*, No. SACV1300316CJCRNBX, 2014 WL 12585783, at *3 (C.D. Cal. Sept. 15, 2014) (common issues “significantly outweigh any individual questions” where the claims arise out of the “same alleged course of conduct” by the defendant).

Settlement Class Members’ claims depend on whether Apple is liable for the alleged battery swell defect, and thus raise predominantly common questions. *See, e.g., Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 322 (C.D. Cal. 2016) (“*Spann I*”) (finding predominance met when conduct at issue is focused primarily on defendant’s actions and not on individual plaintiffs). As a result, this Settlement Class is cohesive: all Settlement Members purchased a First Generation, Series 1, Series 2, or Series 3 Apple Watch that allegedly contain a common battery swell defect that Apple is alleged to have known about and failed to disclose, and the common questions noted above present a significant aspect of litigation and predominate. *See, e.g., Allagas v. BP Solar Int’l*, No. 3:14-cv-00560-SI (EDL), 2016 WL 9114163, at *3-4 (N.D. Cal. Dec. 22, 2016) (finding common issues, including alleged common design defect, defendant’s alleged knowledge of the defect, and defendant’s alleged failure to disclose known

information about the defect, predominate). Thus, common questions predominate for settlement purposes.

ii. A Class Action Is a Superior Means of Resolving This Controversy

Superiority “requires the court to determine whether maintenance of this litigation as a class action is efficient and whether it is fair.” *One Unnamed Deputy Dist. Attorney v. Cty. of Los Angeles*, 2011 WL 13128375, at *4 (C.D. Cal. 2011); *see Wolin v. Jaguar Land Rover North Am., LLC*, 617 F.3d 1168, 1175-76 (9th Cir. 2010). Here, given the relatively modest value of the individual claims, Settlement Class Members are unable to bring individual lawsuits against Apple. And, because the Settlement Class Members number in the hundreds of thousands, class-wide resolution of their claims in a single action is efficient. *See Mullins v. Premier Nutrition Corp.*, 2016 WL 1535057, at *8 (N.D. Cal. 2016) (“Cases, such as this, ‘where litigation costs dwarf potential recovery’ are paradigmatic examples of those well-suited for classwide prosecution.”) (citing *Hanlon*, 150 F.3d at 1023).

There can be little doubt that resolving all Settlement Class Members’ claims through a single class action is superior to a series of individual lawsuits. “From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Finally, settlement class proceedings here do not present the sort of management problems that sometimes override the benefits of class actions, “for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620.

B. The Settlement Merits Preliminary Approval

Recent revisions to Rule 23(e) standardized the analysis needed at the preliminary approval stage.

First, amended Rule 23(e)(1) provides that notice should be given to the class, and hence, preliminary approval should be granted where the Court “will likely be able to”: (i) finally

1 approve the settlement under Amended Rule 23(e)(2); and (ii) certify the class for settlement
 2 purposes. Fed. R. Civ. P. 23 (e)(1)(B)(i)–(ii). As explained above, the Class here meets the
 3 criteria for certification, including all aspects of numerosity, commonality, typicality, adequacy,
 4 and predominance. Rule 23(e)(1)(B)(ii) is therefore met.

5 As to Rule 23(e)(1)(B)(i), final approval is proper under the amended rule upon a finding
 6 that the settlement is “fair, reasonable, and adequate” after considering whether:

7 (A) the class representatives and class counsel have adequately represented
 8 the class;

9 (B) the proposal was negotiated at arm’s length;

10 (C) the relief provided for the class is adequate, taking into account:

11 (i) the costs, risks, and delay of trial and appeal;

12 (ii) the effectiveness of any proposed method of distributing relief to the
 13 class, including the method of processing class-member claims;

14 (iii) the terms of any proposed award of attorney’s fees, including timing
 15 of payment; and

16 (iv) any agreement required to be identified under Rule 23(e)(3); and

17 (D) the proposal treats class members equitably relative to each other.

18 Fed. R. Civ. P. 23(e).

19 The Court will more than “likely be able to” finally approve this Settlement. The Class
 20 Representatives and Settlement Class Counsel have adequately represented the Class. *See infra*,
 21 Section IV(A)(1)(iv). Counsel are experienced in litigating, trying, and resolving consumer class
 22 actions and have developed a strong understanding of the merits of such cases and what type of
 23 settlement is fair, reasonable, and adequate under the circumstances. Tufts Dec. ¶ 10.

24 The Settlement was reached by extensive, arm’s length negotiations between experienced
 25 counsel with a seasoned mediator. It was preceded by extensive discovery and review by counsel
 26 of information and data produced by the respective parties, including expert inspection of the

1 Plaintiffs' watches. Tufts Dec. ¶¶ 11.

2 **1. Adequacy of Relief: Costs, Risks, and Delay**

3 The relief is reasonable and adequate, particularly in light of the risks and delay of trial
4 and associated appeals. Tufts Dec. ¶ 12.

5 Had the Parties been unable to resolve this case through settlement, the litigation would
6 have been protracted and costly. Although Named Plaintiffs and Class Counsel believe that the
7 claims asserted are meritorious, continued litigation against Apple posed significant risks.
8 Continued litigation would require the Court to resolve several separate threshold questions
9 concerning the viability of the litigation. Apple's deadline to file a motion to dismiss the Third
10 Amended Complaint remains stayed. Plaintiffs would have had to win another motion to dismiss,
11 a litigation class certification motion, a summary judgement motion, *Daubert* motions, trial, and
12 appeals against an opponent with a current market capitalization of \$3.6 trillion.

13 Considering these difficult issues, the Settlement's monetary benefits are appropriate and
14 the timing in which they will be provided is significant.

15 The Parties exchanged significant information through discovery which enabled
16 Plaintiffs' Counsel to make a well-informed decision about the risks of the case and the benefits
17 of the settlement. Tufts Dec. ¶ 7.

18 In addition, the Settlement terms are favorable to the Class and meet the demands in the
19 Complaint. All Settlement Class Members will receive monetary benefits under the provisions
20 of the Settlement with no requirement to file a claim. The Settlement provides immediate and
21 meaningful benefits for Settlement Class Members they otherwise may not receive. Tufts Dec.
22 ¶ 13. The proposed total Settlement value here of \$20,000,000 is substantial by any measure and
23 certainly falls within a range of approval. This is particularly true because of the real risk that
24 Plaintiffs could have recovered nothing had litigation continued. *Id.*

25 **2. Adequacy of Relief: Proposed Method of Distributing Relief**

26 Payment will be distributed without the need to file any type of claim form or other proof.

The Settlement provides for a fund to be distributed to Settlement Class members identified by Apple without the need for any claim form. After administrative expenses and attorney fees, the fund will be distributed to Settlement Class Members. Members of the Settlement Class will be requested to confirm or update their payment information and can select their preferred payment method and receive the Class Payment by physical check, electronic check, Automated Clearing House (“ACH,” a/k/a direct deposit), or a virtual Visa or MasterCard gift card. (Ex. 1, Section B(3)). Settlement Class Members who do not update or confirm payment information nor select a payment method, but for whom valid, current payment information can be confirmed, will either: (a) receive an electronic payment if the Settlement Administrator has a valid, current email address; or (b) receive a physical check if the Settlement Administrator has a valid, current street address but not a valid, current email address. *Id.*

3. Adequacy of Relief: Attorneys’ Fees

Plaintiffs will seek no more than \$5,000,000 in attorneys’ fees, plus costs and expenses. *See* Section III(F), *supra*.

C. Rule 23(e)(3) Agreements and Equality of Treatment

Finally, the Court should examine whether the Settlement provides preferential treatment to any class member. This analysis turns on whether there is any disparity among what Class Members are poised to receive and, if so, whether the Settlement “compensates class members in a manner generally proportionate to the harm they suffered on account of [the] alleged misconduct.” *Altamirano v. Shaw Indus., Inc.*, No. 13-CV-00939-HSG, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015); *G.F. v. Contra Costa Cty.*, No. 13-CV-03667-MEJ, 2015 WL 4606078, at *14 (N.D. Cal. July 30, 2015) (analyzing whether settlement “appears uniform”).

Here, Plaintiffs seek certification of a single settlement class and all members of the proposed Settlement Class are entitled to the same benefits. All Settlement Class Members who do not exclude themselves will be eligible for payment of the class benefit.

The Settlement Agreement authorizes a Service Award for each Named Plaintiff in recognition of the services they performed on behalf of the class. The Service Awards requested are not “unreasonably large and thus unfair.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015). Rather, the awards contemplated here are lower than “typical incentive awards in the Ninth Circuit, where \$5,000 is presumptively reasonable.” *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016); *see also Online DVD-Rental*, 779 F.3d at 947-48 (affirming awards of \$5,000 to each of nine class representatives). The amount requested is appropriate given the time, effort, and risk of each Named Plaintiff’s participation in this Action. Tufts Dec. ¶ 7.

D. The District’s Procedural Guidance

The Northern District of California’s Procedural Guidance for Class Action Settlements (hereinafter “District Guidance”) sets forth multiple applicable criteria, addressed below.

1. Sub-Factors 1(a) and 1(c): Classes and Claims Alleged v. Settled

The proposed Settlement Class is smaller than that alleged in the Complaint. The Complaint sought a class consisting of: “All natural persons who purchased, other than for resale, any model First Generation, Series 1, Series 2, Series 3, Series 4, Series 5, Series 6, or Series SE Apple Watch (“Class Watches” or “Watches”) and who made such purchase in the United States (including the District of Columbia) for personal, consumer, and/or household use.” (ECF 1). The Settlement Class is defined as: “All natural persons who reside in the United States, who own or owned any model First Generation, Series 1, Series 2 or Series 3 Apple Watch for personal and/or household use, and who are reflected in Apple’s records as having reported the Covered Issues in the United States.” (Ex. 1, ¶ 24). “Covered Issue(s)” means “issues reported to Apple regarding the Covered Watches reflected in Apple’s records as having reported symptoms potentially associated with battery swell.” (Ex. 1, ¶ 5).

The adjustment of the class definition was driven by the expert inspection of the watches at issue and document discovery. The incidence of symptoms potentially associated

1 with battery swell was significantly less in generations of the Apple Watch after Series 3.
2 Moreover, even with respect to the Covered Watches, only a very small percentage of owners
3 were reflected in Apple's records as having reported symptoms potentially associated with
4 battery swell. Therefore, it was prudent to focus the litigation, and the settlement, on the
5 Covered Watches. Inclusion of later series of Watches would have expanded the class but not
6 meaningfully increased the recovery to the class. Purchasers of later generation watches are
7 not releasing Apple for the claims in this case.

8 **2. Sub-Factor 1(e): Anticipated Recovery v. Settlement Amount**

9 Continued litigation carried considerable risk of a lesser recovery or none at all. Apple
10 vigorously denies liability and has argued that the Watches were not defective, and further that
11 changes in various generations of the Apple Watch would defeat an attempt to show a common
12 defect across different generations of Watches. Plaintiffs would have to maintain class
13 certification through entry of judgment and overcome numerous defenses including Apple's
14 arguments that it lacked sufficient presale knowledge to create a duty to disclose the alleged
15 defect, that it owes no damages because it provided adequate repairs, and that most purchasers
16 did not experience the alleged defect.

17 The settlement provides Settlement Class Members the opportunity to achieve a certain
18 recovery without the burden of having to make a claim. It also ensures they will be compensated
19 now, as opposed to waiting years for an uncertain recovery. No other cases are impacted by the
20 settlement and there is no reversion. The settlement is a win for Settlement Class Members and
21 meets all criteria for preliminary approval.

22 **3. Sub-Factor 1(g): Expected Claims Rates**

23 There will be no claims process. Apple anticipates having valid email or physical
24 addresses for over 90% of Settlement Class members (Apple is in the process of confirming class
25 contact data). Settlement Class members will be requested to confirm or update their payment
26 information and elect a payment method, but Settlement Class Members who do not respond will

receive direct payment if the Settlement Administrator can confirm a current and valid email or physical mailing address. Thus, it is expected that a high percentage of Settlement Class Members will receive payment under the Settlement. Tufts Decl., ¶ 14.

4. Factor 2: Settlement Administration

Plaintiffs' counsel retained Angeion Group as the Settlement Administrator after sending requests for proposals to four leading class action administrators and receiving proposals from each. Tufts Decl., ¶ 15. After analyzing the proposals and consulting with Apple, Plaintiffs' counsel selected Angeion Group based on its qualifications and competitive bid. *Id.*

Cunningham Bounds, LLC and Kilborn Law, LLC have had no previous engagements with Angeion Group. Morgan & Morgan Complex Litigation Group have used Angeion Group for class notice and settlement administration over the last two years in:

	Case Name	Case No.	Court
5/29/2024	<i>Kellman v. Spokeo Inc.</i>	3:21-cv-08976	N.D. Cal.
N/A	<i>Brown v. Google LLC</i>	4:20-cv-03664	N.D. Cal.
N/A	<i>Callahan et al. v. PeopleConnect, Inc.</i>	3:20-cv-09203	N.D. Cal.
6/24/2024	<i>Guarnaschelli et al. v. East River Medical Imaging P.C.</i>	656099/2023	N.Y. Sup. Ct.
6/20/2024	<i>Bundage v. Order Express Inc.</i>	1:22-cv-07210	N.D. Ill.
11/22/2023	<i>In re: US Fertility LLC Data Security Litigation</i>	8:21-cv-00299	D. Md.
5/17/2023	<i>Stoffers v. Dave Inc.</i>	20STCV35381	Cal. Super. Ct.
3/13/2023	<i>Flores v. Don Roberto Jewelers Inc.</i>	30-2021-0121035-CU-NP-CXC	Cal. Super. Ct.
3/7/2023	<i>Retsky et al. v. Supercare Health Inc. and Supercare Inc.</i>	22STCV16267	Cal. Super. Ct.
2/17/2023	<i>McNicholas v. Illinois Gastroenterology Group, PLLC</i>	22LA00000173	Ill. Cir. Ct.
2/3/2023	<i>Morales et al. v. Orlando Family Physicians LLC</i>	2021-ca-009153-o	Fla. Cir. Ct.
12/2/2022	<i>Stevens v. Pepsico Inc. et al.</i>	7:22-cv-00802	S.D.N.Y.

Administrative costs will be paid from the settlement fund. The Settlement Administrator has agreed to perform all settlement notice and administration duties required by the Settlement

1 Agreement at a cost not expected to exceed \$599,000. Wesibrot Decl., attached as Exhibit 5, ¶
 2 36. In addition to managing the notice program and receiving and processing claims and opt-
 3 outs, Angeion will maintain a settlement website containing links to the notice, claim form, and
 4 all other relevant settlement documents. *Id.* ¶¶ 30-32.

5 Angeion has robust policies, procedures, and infrastructure for data security. Angeion's
 6 privacy practices comply with the California Consumer Privacy Act. Angeion imposes additional
 7 data security measures for the protection of Personally Identifiable Information (PII), including
 8 redaction, restricted network and physical access on a need-to-know basis, and network access
 9 tracking. Angeion requires background checks of all employees and requires background checks
 10 and ongoing compliance audits of its contractors. Data is transmitted using Transport Layer
 11 Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and
 12 financial institution standard of AES 256-bit encryption. Angeion monitors the latest compliance
 13 requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that it is meeting all
 14 necessary regulatory obligations as well as aligning to industry best practices and standards set
 15 forth by frameworks like CIS and NIST. *Id.*, ¶¶ 13-16. Angeion maintains a comprehensive
 16 insurance program, including sufficient Errors & Omissions coverage. *Id.*, ¶ 17.

17 **5. Factors 3-5: Notice Program, Opt-Outs, and Objections**

18 The Notice Program is thorough, far-reaching, and effective. The Notices clearly advise
 19 Class Members of their ability to opt-out and provide 60 days from the Notice Date for opt-outs.
 20 Detailed information about the Notice Program is outlined in the declaration of the Settlement
 21 Administrator. *Id.*, ¶¶ 18-29.

22 In accordance with the District's Guidance, opting out requires only that Class Members
 23 provide the Settlement Administrator with their name and address, a statement that they want to
 24 be excluded from the Action, and their signature. Likewise, the procedure for Objecting is set
 25 forth clearly in the Notices. Objections must be submitted in writing to the Court no later than 60
 26 days after the Notice Date, and must include the objector's name, address, and telephone number;

an explanation of the objector's belief that they are a Settlement Class Member; a statement of the grounds for the objection; identification of all counsel who represent the objector and whether any will appear at the Final Approval Hearing, an indication whether the objector intends to appear at the Final Fairness Hearing, and a personal signature.

6. Factors 6 through 10: Attorneys' Fees, Costs, and Expenses; Service Awards; Cy Pres; Timeline; and CAFA

As noted above in section III(F), Class Counsel will seek no more than \$5,000,000 in attorneys' fees, plus costs and expenses. As explained in section IV(C), Plaintiffs will seek modest Service Awards for each Named Plaintiff.

Class Members will have 60 days after the Notice Date to object or opt-out. By no later than 60 days after the Notice Date, Plaintiffs will file their motion for final approval of the Settlement. Plaintiffs will file their motion for attorneys' fees, costs, and expenses and for Service Awards by no later than 40 days after the Notice Date.

The proposed service awards are similar to those in other class actions involving Apple. In *In re Apple Device Litigation*, 5:18-md-02827-EJD, Apple agreed to a service award of \$3,500 for named Plaintiffs who were deposed and \$1,500 for named Plaintiffs who were not (Doc. 608). In *In re: Macbook Keyboard Litigation*, 5:18-cv-02813-EJD, Apple did not oppose and the Court granted service awards of \$5,000 each for named Plaintiffs (Doc. 410-1, Section 8.6). In *Maldonado v. Apple, Inc.*, 3:16-cv-04067-WHO, the Court granted service awards of \$15,000 and \$12,500 to the two named Plaintiffs, respectively. (Doc. 340, ¶ 11). In *Tabak v. Apple, Inc.*, 4:19-cv-02455-JST, Apple did not oppose service awards of up to \$3,000 per named Plaintiff. (Doc. 171-2).

As described above, the cash payment to Settlement Class Members will be either \$20 for each Covered Device or, if necessary, a pro rata portion of the Net Settlement Fund less than \$20. If, following the deadline for Settlement Class Members to confirm or update their payment information and select their preferred payment method, it appears that the Net Settlement Fund

1 minus the sum of all Class Payments will exceed \$50,000, then each Settlement Class Member
 2 who has updated or confirmed payment information and made a payment selection by the
 3 Response Deadline, and those Settlement Class Members for whom valid, current payment
 4 information can be confirmed, will receive an equal, total payment of up to a maximum of \$50
 5 for each Covered Device. Only then will any remaining funds be paid to a *cy pres* recipient.
 6 Subject to Court approval, the Parties propose The Rose Foundation's Consumer Products Fund
 7 as the *cy pres* recipient, whose work is closely related to the issues raised by this lawsuit and
 8 furthers the objectives of this Settlement Agreement because it was created to "help consumers
 9 understand product labeling, marketing, advertising and product performance claims; the
 10 potential personal and environmental health impacts of product ingredients; and to promote truth-
 11 in-advertising and truth-in-labeling with required warnings and disclosures."
 12 (<https://rosefdn.org/consumer-products-fund>). Under no circumstances will the settlement funds
 13 revert to Apple.

14 CAFA Notice is required and will be given. Compliance with the coupon settlement
 15 provisions of CAFA, or other settlement related dictates, are inapplicable here. No notice to any
 16 other government entities is required.

17 **7. Factor 11: Comparable Outcomes**

18 The funds received per class member that will be distributed as part of this settlement
 19 (between \$20 and \$50 per device) are consistent with other class action settlements approved
 20 by California district courts. *See* Ex. 6 (chart of comparable settlements); *see also Free Range*
 21 *Content, Inc. v. Google, LLC*, 2019 WL 1299504, at *2-3 (N.D. Cal. 2019) (approving
 22 settlement which paid as low as \$10 per class member); Order Granting Motion for Final
 23 Approval of Class Action Settlement, *In re: Sony VAIO Computer Notebook Trackpad*
 24 *Litigation*, No. 3:09-cv-02109 (S.D. Cal. Aug. 7, 2017), Dkt. No. 378 at 4 (approving
 25 settlement paying \$5 to class members whose laptops did not manifest the defect); *see also*
 26 Order Granting Preliminary Approval of Class Action Settlement, *Fitzhenry-Russell v. Keurig*

1 *Dr. Pepper, Inc.*, No. 5:17-cv-00564 (N.D. Cal. Jan. 10, 2019), Dkt. No. 335 at 3 (approving
2 settlement which paid class members \$2 to \$5.20 without proof of purchase or \$40 with proof
3 of purchase).

4 **E. The Court Should Order Dissemination of Class Notice as Proposed**

5 **1. The Notice Program Provides the Best Method of Notice Practicable**

6 The federal rules require that before finally approving a class settlement, “[t]he court must
7 direct notice in a reasonable manner to all class members who would be bound by the proposal.”
8 Fed. R. Civ. P. 23(e). Where the settlement class is certified pursuant to Rule 23(b)(3), the notice
9 must also be the “best notice practicable under the circumstances, including individual notice to
10 all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B).

11 Notice will be provided via email only to members of the Settlement Class for whom
12 Apple has an email address, and via direct mail postcard notice for members of the Settlement
13 Class for whom Apple has a physical address, but not an email address, on record. Full Class
14 Notice will also be placed on the Settlement Website. Appropriate steps will also be taken to re-
15 send notices that are returned undeliverable and to identify updated e-mail addresses and resend
16 the E-mail Notice to the extent updated e-mail addresses are identified. Weisbrot Decl., ¶¶ 18-
17 29. This proposed Notice Plan is designed to reach as many of the Settlement Class Members as
18 possible, and fully comports with due process under the circumstances of this case. Even prior to
19 the amendment to Rule 23(c)(2)(B) expressly permitting electronic notice, email notice in similar
20 circumstances has been found appropriate. *See, e.g., Spann I*, 314 F.R.D. at 331; *In re Sony PS3*
21 *Litig.*, No. 10-CV-01911-YGR, 2017 WL 5598726, at *16 (N.D. Cal. Nov. 21, 2017).

22 This plan provides the best notice practicable under the circumstances and can begin upon
23 the Court’s approval. *See, e.g., Wahl v. Yahoo! INC.*, 2018 WL 6002323, at *3 (N.D. Cal. 2018)
24 (concluding that a notice plan calling for direct email notice, followed by mailed notice to
25 individuals to whom emails “bounced,” constituted “the best notice practicable under the
26 circumstances”); *Walsh v. CorePower Yoga LLC*, 2017 WL 589199, at *12 (N.D. Cal. 2017)

(approved notice plan provided for a combination of mail and email using the most recent contact information available).

2. The Proposed Notices Adequately Inform Settlement Class Members

Notices provided to class members should “clearly and concisely state in plain, easily understood language” the nature of the action; the class definition; the class claims, issues, or defenses; that the class member may appear through counsel; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members. Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e) requires that a notice describe “the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *In re DVD-Rental*, 779 F.3d at 946.

The Notices proposed by the Parties—e-mail notice, postcard notice and website notice—comply with those requirements. Each provides straightforward information about the nature of the action, the terms of the Settlement, the class definition, the litigation, Apple’s defenses, that Settlement Class Members may appear through counsel, the process for requesting exclusion, and the binding effect of the Settlement on Settlement Class Members if they do not request exclusion. The Notices also direct Settlement Class Members to the Settlement Website for more information. The Notices provide “the best practicable notice” to the Settlement Class here. *See, e.g., Spann I*, 314 F.R.D. at 331-32 (approving notices containing substantially similar content).

3. Notice of the Settlement Will Be Provided to Appropriate Officials.

Notice of the Settlement will also be provided to the appropriate federal and state officials as required by the Class Action Fairness Act, 28 U.S.C. § 1715, so they may make an independent evaluation of the Settlement and bring any concerns to the Court’s attention.

F. Proposed Schedule for Final Approval

The next steps in the settlement approval process are to schedule a final approval hearing, notify the class of the Settlement and hearing, allow Settlement Class Members an opportunity

to file any objections or comments regarding the Settlement, and allow Plaintiffs to conduct appropriate objector discovery if necessary.³ Toward these ends, the Parties have provided the Court with a proposed order that provides for the following schedule:

Event	[Proposed] Deadline
Class Action Fairness Act notice to state and federal officials, under 28 U.S.C. § 1715	Within 10 days after filing of the motion for preliminary approval
Class data to be provided to Settlement Administrator	As soon as practicable, but no later than 30 days after entry of preliminary approval order
Notice Date	No later than 60 days after entry of preliminary approval order
Notice to be substantially completed	No later than 85 days after entry of preliminary approval order
Plaintiffs to move for attorneys' fees, expenses, and service awards	100 days after entry of preliminary approval order
Plaintiffs to move for final approval of the settlement	120 days after entry of preliminary approval order
Deadline for the submission of objections and requests for exclusion, and opposition or objections to Plaintiffs' motion for attorneys' fees, expenses, and service awards	120 days after entry of preliminary approval order
Reply briefs in support of final approval and motion for attorneys' fees, expenses, and service awards, and responses to any timely objections	145 days after entry of preliminary approval order
Deadline to update or confirm payment information and elect payment method	145 days after entry of preliminary approval order
Final Fairness Hearing	At least 165 days after entry of preliminary approval order

V. CONCLUSION

The Parties respectfully request that the Court enter an Order (1) preliminarily approving the Settlement Agreement; (2) certifying, for settlement purposes, the proposed Settlement Class

³ See, e.g., Final Order and Judgment, *Milano v. Interstate Battery Sys. of Am., Inc.*, No. 4:10-CV-02125 (N.D. Cal. July 5, 2012) (noting that objector repudiated his objection in deposition testimony); *In Re: MagSafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105, at *2 (N.D. Cal. May 29, 2012) (objector depositions authorized to inquire into objectors' membership in the class and ability to post an appellate bond).

under Rule 23(a), (b)(3), and (e); (3) approving and ordering dissemination of the proposed class notice and forms of the Notice Program set forth in the Settlement Agreement; (4) appointing Plaintiffs as Settlement Class Representatives; (5) appointing Steven Nicholas and Lucy Tufts of Cunningham Bounds, Michael Ram and Marie Appel of Morgan & Morgan, and Ben Kilborn of Kilborn Law, LLC, as counsel for the Settlement Class (“Class Counsel”) under Rule 23(g); (6) appointing Angeion Group as the Settlement Administrator; and (7) scheduling a Final Approval Hearing at a date convenient for the Court.

Dated: August 12, 2024

CUNNINGHAM BOUNDS, LLC

By: /s/ Lucy E. Tufts
LUCY E. TUFTS

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